

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

US EPA RECORDS CENTER REGION 5



498217

UNITED STATES OF AMERICA,

Plaintiff,

v.

TERRY LITTLE;

JACK LITTLE;

and The Lubrizol Corporation;

Defendants.

C 84-7801
CIVIL ACTION NO.

JUDGE JOHN W. POTTER

U.S. DISTRICT COURT
NORTHERN DISTRICT
OF OHIO, OHIO

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FILED

COMPLAINT

The United States of America, by its undersigned attorneys
and at the request of the Administrator of the United States
Environmental Protection Agency, alleges that:

PRELIMINARY STATEMENT

1. This is a civil action pursuant to Sections 104 and
107 of the Comprehensive Environmental Response, Compensation and
Liability Act (hereinafter "CERCLA"), 42 U.S.C. §§9604 and 9607,
for recovery of costs incurred by the United States for removal and
remedial actions with respect to actual and threatened releases
into the environment of hazardous substances at a site in Ballville
Township, Sandusky County, Ohio, known as "Greiner's Lagoons"
(hereinafter referred to as the "Greiner Lagoons Site" or "Site").

15. Thereafter, U.S. EPA conducted further investigation and analysis of the Site and devised a strategy for implementing removal and remedial action to abate permanently the release and threatened release of wastes from the Site. This action consisted primarily of draining, filling and capping lagoon No. 4.

16. The removal and remedial action described in paragraph 15 above, began in February 1982 and continued until June 1982.

17. The total costs of the actions described in paragraphs 13-16 above were approximately \$161,000.

18. U.S. EPA continues to incur enforcement costs with respect to the Greiner's Lagoons Site, including the costs of additional sampling and the costs for bringing this action.

CLAIM FOR RELIEF

19. Plaintiff United States realleges paragraphs 1-18 herein.

20. Section 104(a)(1) of CERCLA, 42 U.S.C. §9604(a)(1), provides in pertinent part, as follows:

Whenever (A) any hazardous substance is released or there is a substantial threat of such release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous

substance, pollutant, or contaminant at any time *** or take any other response measure consistent with the national contingency plan which the President deems necessary to protect the public health or welfare or the environment, unless the President determines that such removal and remedial action will be done properly by the owner or operator of the *** facility from which the release or threat of release emanates, or by any other responsible party.

21. Section 104(b) of CERCLA, 42 U.S.C. §9604(b) provides:

Whenever the President is authorized to act pursuant to subsection (a) of this section, or whenever the President has reason to believe that a release has occurred or is about to occur, or that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant and that a release may have occurred or be occurring, he may undertake such investigations, monitoring, surveys, testing, and other information gathering as he may deem necessary or appropriate to identify the existence and extent of the release or threat thereof, the source and nature of the hazardous substances, pollutants or contaminants involved, and the extent of danger to the public health or welfare or to the environment. In addition, the President may undertake such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response action, to recover the costs thereof, and to enforce the provisions of this Act.

22. The President delegated his authority under Sections 104(a) and (b) of CERCLA to the Administrator of the EPA by Executive Order 12316, 46 Fed. Reg., 42238 (1981).

23. The industrial chemical wastes at the Greiner's Lagoons Site included hazardous substances which were released, or threatened to be released, into the environment, within the meaning of Sections 101(14), 101(22) and 104(a)(1) of CERCLA, 42 U.S.C. §§9601 and 9604(a)(1).

24. As described in paragraphs 13-16 above, the Administrator of U.S. EPA acted pursuant to Section 104(a) of CERCLA, 42 U.S.C. §9804(a), to remove or arrange for the removal of the hazardous substances released into the environment at the Greiner's Lagoons Site, and to provide remedial and other necessary response actions. As specifically authorized by Section 104(b) of CERCLA, 42 U.S.C. §9604(b), the Administrator's response actions included: investigations; monitoring; surveys; testing; and other information gathering deemed necessary or appropriate to identify the existence and extent of the releases or threatened releases at the Site, the source and nature of the hazardous substances involved, and the extent of the danger to the public health or welfare or the environment presented by such releases. The Administrator's response actions under Section 104(b) of CERCLA, 42 U.S.C. §9804(b), also included planning, legal, fiscal, engineering, and other studies or investigation deemed by him to be necessary or appropriate to plan and direct response action, to enforce the provisions of CERCLA and to recover the costs of such response and enforcement, as described in paragraphs 13-18 above.

25. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), authorizes recovery of "all costs of removal or remedial action incurred by the United States Government... not inconsistent with the national contingency plan."

26. "Removal" is defined in Section 101(23) of CERCLA, 42 U.S.C. §9601(23), in pertinent part, as follows:

*** the cleanup or removal of released hazardous substances from the environment, such actions as may be necessary taken in the event of the threat of release of hazardous substances into the environment, such actions as may be necessary to monitor, assess and evaluate the release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment, which may otherwise result from a release or threat of release. The term includes, in addition, without being limited to, *** action taken under Section 104(b) of this title***.

27. "Remedial action" is defined in Section 101(24) of CERCLA, 42 U.S.C. §9601(24), in pertinent part, as follows:

*** those actions consistent with permanent remedy taken instead of or in addition to removal actions in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment***.

28. The costs incurred by the United States, described in paragraphs 13-18, and 24 above, constitute costs of "removal" and "remedial action" within the meaning of Sections 101(23), 101(24) and 107 of CERCLA, 42 U.S.C. §§9601(23), 9601(24) and 9607.

29. Section 107(a) of CERCLA, 42 U.S.C. §9607(a), authorizes the United States to recover its costs for "removal" or "remedial actions" from:

- (1) the owner and operator of a *** facility,
- (2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
- (3) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment of hazardous substances owned or possessed by such person, by any other party or entity, at an facility owned or operated by another party or entity and containing such hazardous substances, and
- (4) any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance***

30. The Greiner's Lagoons site is a "facility" within the meaning of Sections 101(9) and 107(a) of CERCLA, 42 U.S.C. §§9601(9) and 9607(a).

31. As described in paragraphs 4, 5, 10 and 11 above, defendants Terry Little and Jack Little are persons "who at the time of disposal of any hazardous substance owned or operated [a] facility at which such hazardous substances were disposed of", within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. §9607(a)(2). Defendants Terry Little and Jack Little are also persons "who accepted *** hazardous substances for transport to disposal or treatment facilities or sites selected by such person[s]" within the meaning of Section 107(a)(4) of CERCLA, 42 U.S.C. §9607(a)(4).

32. As described in paragraphs 7 and 11 above, Lubrizol is a "person who by contract, agreement or otherwise arranged for disposal or treatment, of hazardous substances owned or possessed by such person, by another party or entity, at any facility owned or operated by another party or entity and containing such hazardous substances", within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. §9607(a)(3).

33. The removal and remedial actions taken and the costs incurred by plaintiff as described in paragraphs 13-18, 24 and 28 above, are not inconsistent with the National Contingency Plan. All conditions precedent to recovery of such costs have occurred or have been performed.

34. Defendants are jointly and severally liable to Plaintiff for all costs of removal or remedial action incurred by Plaintiff, as described in paragraphs 13-18, 24 and 28 above.

PRAYER FOR RELIEF

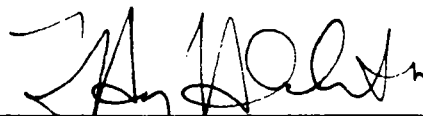
WHEREFORE, Plaintiff, United States of America, respectfully prays that:

(A) Defendants Terry Little, Jack Little and The Lubrizol Corporation be ordered to reimburse plaintiff for all costs, including interest, incurred by it for removal or remedial action or other response to the release or threat of release of hazardous substances from the Greiner's Lagoons Site.

(B) Plaintiff be awarded costs and disbursements of this action; and

(C) This Court grant such relief as it may deem just and proper.

Respectfully submitted,



F. HENRY HABICHT II.
Assistant Attorney General,
Land and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530



ROSS L. CONNEALY, Attorney
Environmental Enforcement Section
Land and Natural Resources Division
United States Department of Justice
10th & Pennsylvania, Ave., N.W.
Washington, D.C. 20530
(202) 633-2807

WILLIAM J. EDWARDS
Acting United States Attorney
Northern District of Ohio

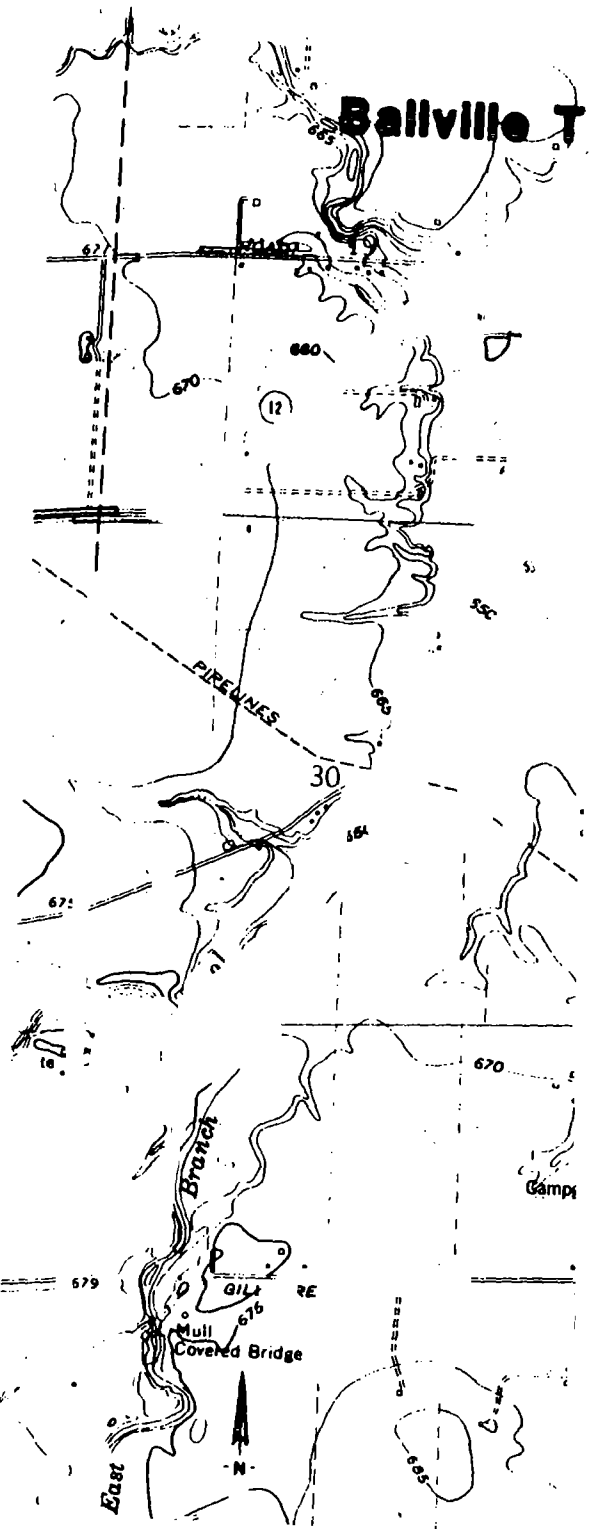


VERNE K. ARMSTRONG
Assistant United States Attorney
307 U.S. Courthouse
1716 Speilbusch Avenue
Toledo, Ohio 43624
(419) 259-6376

OF COUNSEL:

HELEN KEPLINGER
Office of Enforcement and
Compliance Monitoring
U.S. Environmental Protection
Agency
401 M Street, S.W.
Washington, D.C. 20460

Pierre Talbert by: [signature]
PIERRE TALBERT
Assistant Regional Counsel
U.S. Environmental Protection
Agency
230 South Dearborn Street
Chicago, Illinois 60614
(312) 886-6839



NER'S GOONS **usky County, Ohio**

FIGURE 15

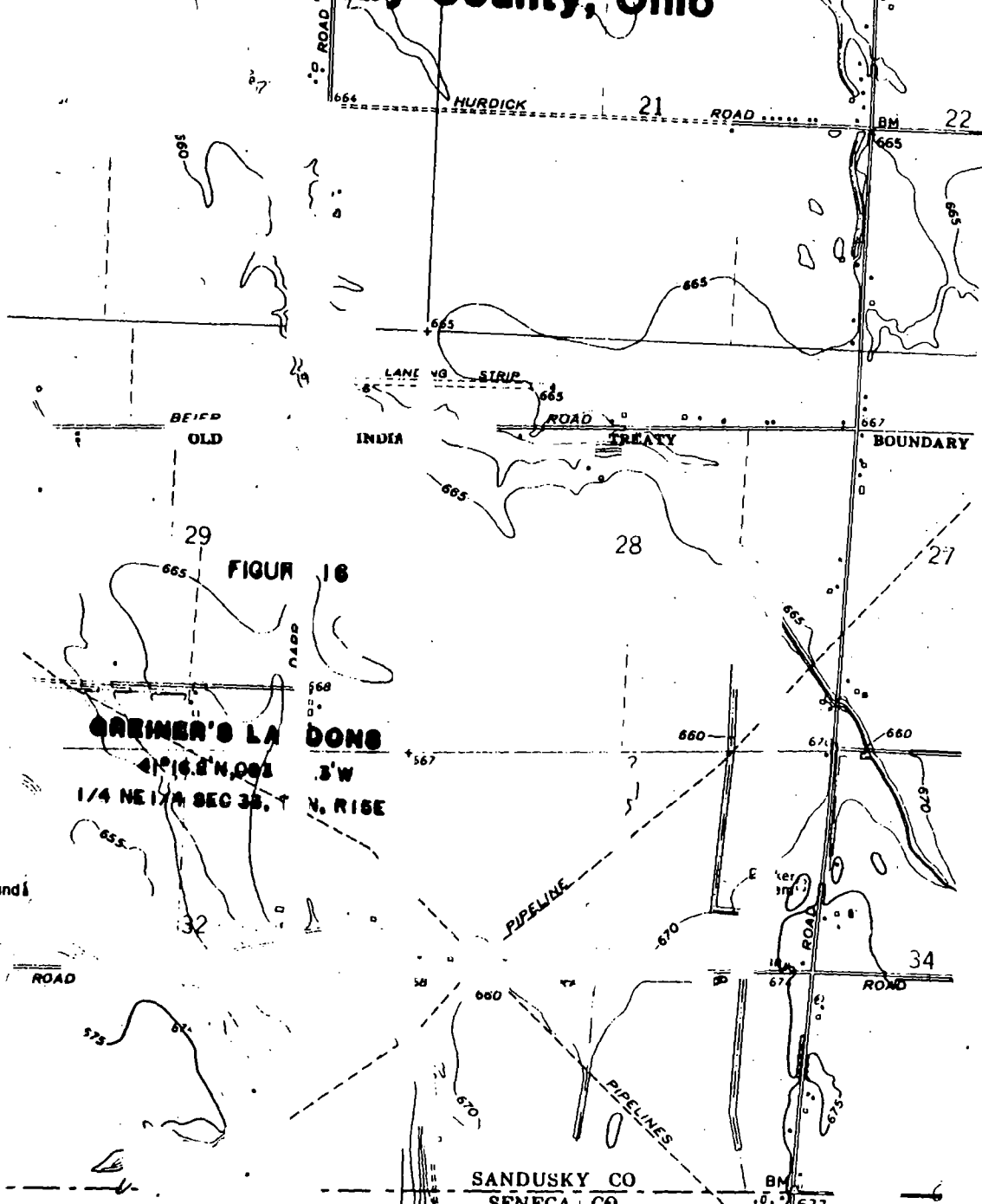


EXHIBIT A

FIGURE 16

GREINER'S LA DONS
 41° 16' N, 08° 13' W
 1/4 NE 1/4 SEC 35, T. N. RISE

SANDUSKY CO
 SENECA CO